IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

Crl.MC.No. 4031 of 2006()

AGAINST THE ORDER DATED 20/07/2006 IN CMP 1976/06 IN CC.228/1998 (C.C.No.997/2002) of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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PETITIONER:

JOSHY, S/O. KUTTAN,
AIRADA HOUSE, KARUVANNOOR, THRISSUR DISTRICT.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS:

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1. THE SUB REGISTRAR,
IRINJALAKUDA, THRISSUR DISTRICT.

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.4031of 2006

Dated this the 13th day of December 2006

O R D E R

The petitioner is aggrieved by a rejection of his claim for lifting the attachment under Section 85(3) Cr.P.C on the short ground that it is belated. According to the petitioner, there is sufficient reason to condone the delay. In the impugned order, the rejection is on the ground that "there is no provision for enhancement of the said period of two years under Section 85(3) Cr.P.C". The learned counsel for the petitioner points out that in the light of the subsequent decision in Pharma Kuries (P) Ltd. vs. Soju [2006(4) KLT 326], the learned Magistrate is obviously wrong and must proceed to consider whether the delay can be condoned.

2. I agree with the learned counsel for the petitioner. I am satisfied that the impugned order deserves to be set aside and the learned Magistrate must be directed to consider the application under Section 85(3) Cr.P.C afresh. I make it clear that it shall be open to the petitioner to file a formal application for condonation of delay also within a period of ten days from this date.

3. This Criminal Miscellaneous Case is accordingly allowed to the above extent.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006